

**Emilie K. Edling**, OSB #035931  
E-mail: eedling@houser-law.com  
**Carlos A. Rasch**, OSB #072179  
E-mail: crasch@houser-law.com  
HOUSER & ALLISON, APC  
9600 SW Oak St, Suite 570  
Portland, OR 97223  
Telephone: (503) 914-1382  
Facsimile: (503) 914-1383  
Attorney for Defendant Ocwen  
Loan Servicing, LLC

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

RUSSELL B. NELSON, JR,  
Plaintiff,

v.

OCWEN LOAN SERVICING, LLC, a  
Delaware limited liability company;  
EQUIFAX INFORMATION SERVICES,  
LLC, a Georgia limited liability company;  
EXPERIAN INFORMATION SOLUTIONS,  
INC., an Ohio corporation; and TRANS  
UNION, LLC, a Delaware limited liability  
company,  
Defendants.

Civil No.: 3:14-cv-419

**DEFENDANT OCWEN LOAN  
SERVICING, LLC'S ANSWER AND  
AFFIRMATIVE DEFENSES TO  
ADVERSARY COMPLAINT**

**I. ANSWER**

For its answer to Plaintiff's Complaint, Defendant Ocwen Loan Servicing, LLC  
("Ocwen") admits, denies, and affirmatively alleges as follows:

1. In response to Paragraph 1, Ocwen admits that this is an action for damages

brought by plaintiff under 15 USC §1681 et seq., the Fair Credit Reporting Act, but denies all other allegations contained therein.

2. In response to Paragraphs 2 and 3, the allegations contained within pertain to legal conclusions to which no response is required.

3. In response to Paragraphs 4, 6, 7, 8 the allegations contained within regard an individual other than Ocwen, and therefore do not require a response from Ocwen. To the extent a response is required, Ocwen lacks sufficient information to form a belief as to the truth of the allegations, and therefore denies the same.

4. In response to Paragraph 5, Ocwen admits it was and is a Delaware limited liability company authorized to business in Oregon.

5. In response to Paragraph 9, Ocwen incorporates by references its responses to Paragraphs 1 through 8.

6. In response to Paragraphs 10 and 11, the allegations contained within pertain to documents attached to Plaintiff's Complaint. These documents speak for themselves and Ocwen denies any allegations contrary thereto.

7. In response to Paragraph 12, Ocwen lacks sufficient knowledge to form a belief as to the truth of the allegations, and therefore denies the same.

8. In response to Paragraphs 13 through, Ocwen lacks sufficient knowledge to form a belief as to the truth of the allegations, and therefore denies the same.

9. In response to Paragraph 15, Ocwen admits that it received a payment amount of \$217,491.76. Ocwen lacks sufficient knowledge to form a belief as to the truth of the remaining allegations, and therefore denies the same.

10. In response to Paragraph 16, Ocwen lacks sufficient knowledge to form a

belief as to the truth of the allegations, and therefore denies the same.

11. In response to Paragraphs 17 through 26, Ocwen admits that certain written correspondence was exchanged by Ocwen to Plaintiff, Plaintiff's counsel, and/or persons on Plaintiff's behalf on various dates in 2013. These documents speak for themselves. Ocwen lacks sufficient information to form a belief as to allegations regarding the content of these conversations, and therefore denies the same.

12. In response to Paragraph 27 through 34, the allegations contained within regard an individual other than Ocwen, therefore do not require a response from Ocwen. To the extent a response is required, Ocwen lacks sufficient information to form a belief as to the truth of the allegations, and therefore denies the same.

13. In response to Paragraph 35, Ocwen denies the allegations contained therein.

14. In response to Paragraph 36, the documents referenced therein speak for themselves and Ocwen denies any allegations contrary thereto.

15. In response to Paragraphs 37 through 44, Ocwen denies the allegations contained therein.

16. In response to Paragraph 45 through 59, the allegations contained within regard an individual other than Ocwen, therefore do not require a response from Ocwen. To the extent a response is required, Ocwen lacks sufficient information to form a belief as to the truth of the allegations, and therefore denies the same.

17. Unless expressly admitted above, Ocwen denies all other allegations contained within Plaintiff's Complaint.

## **II. AFFIRMATIVE DEFENSES**

In further answer to Plaintiff's Complaint, Ocwen alleges the following affirmative

defenses to all claims made against Ocwen.

### **FIRST AFFIRMATIVE DEFENSE**

(Failure to State a Claim)

18. Plaintiff's Complaint fails to state a claim for relief against Ocwen.

### **SECOND AFFIRMATIVE DEFENSE**

(Failure to Mitigate)

19. Plaintiff has failed to reasonably mitigate his alleged damages.

### **THIRD AFFIRMATIVE DEFENSE**

(Superseding or Intervening Cause/Fault of Others)

20. Any damages sustained by Plaintiff are the result of a superseding or intervening cause and/or the fault of another, and are not the fault of Ocwen.

### **FOURTH AFFIRMATIVE DEFENSE**

(Comparative Fault)

21. Plaintiff's damages are the result of acts or omissions committed by Plaintiff of which Ocwen cannot be held responsible for.

### **FIFTH AFFIRMATIVE DEFENSE**

(Standing)

22. Plaintiff does not have standing to bring a cause of action against Ocwen under 15 USC §1681s-2(b).

### **SIXTH AFFIRMATIVE DEFENSE**

(Real Party In Interest)

23. Plaintiff is not the real party in interest for the claims alleged against Ocwen.

## **SEVENTH AFFIRMATIVE DEFENSE**

(Private Right of Action)

24. 15 USC §1681s-2(b) does not allow for a private right of action under the circumstances and facts alleged by Plaintiff.

## **EIGHTH AFFIRMATIVE DEFENSE**

(Statute of Limitations)

25. Plaintiff's claim is time barred by the applicable statute of limitations.

## **NINTH AFFIRMATIVE DEFENSE**

(Accuracy of Reporting)

26. To the extent any credit reporting was done by Ocwen, such reporting was true or substantially true.

## **TENTH AFFIRMATIVE DEFENSE**

(Compliance/Good Faith)

27. Plaintiff's claims fail to the extent that, at all relevant times with respect to Plaintiff, Ocwen acted in good faith and complied fully with the applicable requirements of 15 U.S.C. §1681.

## **ELEVENTH AFFIRMATIVE DEFENSE**

(Limited Liability Provision)

28. Plaintiff's claims are barred, in whole or in part, by 15 U.S.C. §1681h(e).

## **TWELFTH AFFIRMATIVE DEFENSE**

(Safe Harbor Provision)

29. Plaintiff's claims are barred, in whole or in part, by 15 U.S.C. §1681s-2(F).

### **THIRTEENTH AFFIRMATIVE DEFENSE**

(No Punitive Damages)

30. Plaintiff cannot recover punitive damages against Ocwen to the extent that the Complaint is devoid of facts sufficient to state a cause of action for punitive or exemplary damages. Additionally, Plaintiff cannot recover punitive damages against Ocwen to the extent such an award would violate the United States Constitution and the Constitution of the State of Oregon.

### **FOURTEENTH AFFIRMATIVE DEFENSE**

(Reservation of Affirmative Defenses)

31. Discovery has not commenced in this case. Ocwen reserves the right to assert additional affirmative defenses as appropriate.

WHEREFORE, Ocwen respectfully requests that this Court enter judgment for the following relief against Plaintiff:

1. Dismissing Plaintiff's Complaint and any actions against Ocwen with prejudice;
2. An award of Ocwen's costs and fees; and

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3. For such other and further relief that this Court deems appropriate.

DATED this 25<sup>th</sup> day of April, 2014.

HOUSER & ALLISON, APC

BY /s/ Carlos A. Rasch

**Emilie K. Edling**

OSB #035931

**Carlos A. Rasch**

OSB #072179

Telephone: (503) 914-1382

Attorneys for Ocwen Loan Servicing, LLC